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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970.

No. 1477

CHICAGO JOINT BOARD, AMALGAMATED CLOTHING WORKERS OF AMERICA, AFL-CIO,
Petitioner,

vs.

CHICAGO TRIBUNE COMPANY, CHICAGO AMERICAN PUBLISHING COMPANY AND FIELD ENTERPRISES, INC.,
Respondents.

PETITIONER'S REPLY TO RESPONDENTS' BRIEFS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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Respondents argued successfully before the lower courts that, because of the First Amendment, conduct of newspapers should be protected from the mandates of the Fourteenth Amendment, and the courts responded with a new, restrictive "state action" rule. Having been successful before the lower courts, respondents' briefs in opposition to the Petition for a Writ of Certiorari are designed to downgrade the breadth and novelty of this rule and to make petitioner's position and case seem unattractive for review. Some of respondents' statements call for a short reply.

It is not true that, "All union members were urged not to buy from Marshall Field, and picket lines were placed around the store to discourage shoppers from entering and buying foreign-made garments." (Tribune Brief, p. 2) At no time were union members urged not to buy from Marshall Field. At no time were shoppers discouraged from entering Marshall Field. Petitioner sought only to exercise its First Amendment rights to convince retail stores not to carry and the general public not to purchase imported men's and boys' clothing. Nor, of course, is the Tribune's statement supported by the record.[1]

The Tribune cites three sections of its Advertising Acceptability Guide in support of its rejection of the advertisement in question. One of the sections is irrelevant on its face,[2] the second was not even mentioned by the employee who rejected the advertisement,[3] and the third simply states that the Tribune can reject any advertisement it wants to reject. (Tribune Brief, p. 3)

In order to characterize this case as a "test case," the Tribune states that petitioner brought this suit "without even once attempting to revise and resubmit the ad in accordance with respondents' advertising standards". (Tribune Brief, p. 4) In fact, the tendered advertisement satisfied all of the requirements for "political advertising"

1. The Tribune's reference to the Appendix in the Court of Appeals (hereinafter "Appendix") is simply a reference to the advertisement in question.

2. The advertisement, tendered by a union, does not deal with "competitive organizations, institutions or merchandise." The lower courts acknowledged, and the parties below did not contest, the obvious fact that petitioner's advertisement was editorial, not commercial.

3. The Tribune employee stated his "reasons" for rejecting the advertisement and cited what he deemed to be the pertinent sections of the Guide in an affidavit. (Appendix, at p. 30) He makes no reference, nor rationally could he, to the section dealing with advertising which is "misleading, deceptive, or fraudulent, or which grossly exaggerates, or makes unwarranted claims."

set out in the Tribune's Advertising Acceptability Guide. (Appendix, p. 84) Furthermore, petitioner actually did revise its proposed advertisement in accordance with suggestions made by Tribune's counsel. (Appendix, p. 12)

Field Enterprises' suggestion that it was following some kind of fairness policy in rejecting the advertisement—that it "declined to publish the proffered advertisement because [it] felt that it unfairly singled out one retailer of imported clothing, Marshall Field & Co." (Field Brief, p. 2) —is made for the first time in this Court and is not supported by its citation to the Appendix or anything else in the record. Prior to its opposition to the pending Petition, Field Enterprises took the position that the advertisement "violated our policy against printing advertisements which name others unless they consent to being named" (Appendix, p. 28)—a "policy" which simply does not exist.[4]

The breadth of the new constitutional rule involved in this case is evidenced by respondents' opposition briefs. Thus, the Tribune does not argue that on the peculiar facts of this case the conduct of these respondents failed to involve "state action". Rather, it distinguishes the leading "state action" cases on the ground that none of them "involved newspapers" and, citing *Near* v. *Minnesota,* 283 U. S. 697 (1931), it argues that by their very nature "Newspapers Are Not Engaged in State Action". (Tribune Brief, pp. 5-7) Field Enterprises, meanwhile, suggests that the conduct of a newspaper would not involve state action unless it were "an official government press, an *Izvestia, Pravda* or New China News Agency". (Field Brief, p. 5)

The breadth and novelty of this new rule is also evidenced by respondents' wholly erroneous contentions that unless it is followed "federal judges would become editors and

4. For examples of advertisements that were published without consent of the person named, see Appendix, pp. 71-79.

advertising managers of newspapers" (Tribune Brief, p. 7) and that petitioner wants the press to be scrutinized for "fairness and balance".[5] (Field Brief, p. 7) The point is not that respondents' parade of horribles is nonsense (although it is), but that here is a new, far-reaching rule of law introduced because of an unfounded fear that the established rule would maximize the public's exercise of First Amendment rights only at the expense of the rights of newspapers.

The new "state action" rule followed by the courts below effectively restricts the free exercise of First Amendment rights. It is respectfully submitted that it should not be permitted to stand as a precedent without careful review by this Court.[6]

Respectfully submitted,

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5. Although Field Enterprises places the term "fairness and balance" in quotes, the term does not come out of any paper filed by petitioner and the idea that the courts would ever review a newspaper for content is repugnant to petitioner.

6. It does a disservice to suggest that the record in this case fails to raise the very issue successfully raised by respondents in the courts below. To eliminate any doubt on the question, petitioner is, pursuant to Supreme Court Rule 21, filing herewith the certified Appendix in the Court of Appeals.